

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Padilla	SB 1008

SUBJECT

Limited Partnerships & Foreign Limited Partnerships/Engineers & Land Surveyors

SUMMARY

This bill would do the following:

- Authorize licensed engineers and land surveyors to organize and operate as limited liability partnerships (LLPs), and
- Require engineers and land surveyors organizing as LLPs to maintain insurance liability coverage.

This analysis only addresses the changes to the Business and Professions Code and Corporation Code to the extent those provisions affect the department.

PURPOSE OF BILL

According to the author's office, the purpose of this bill is to encourage the expansion of business practices and provide flexibility in the business entity form, while bringing California into parity with the vast majority of other states.

EFFECTIVE/OPERATIVE DATE

Because this bill is an urgency measure, it would be effective immediately upon enactment, operative as of that date and before January 1, 2016, and as of that date would be repealed, and existing law would be reinstated.

ANALYSIS

FEDERAL/STATE LAW

Under the Beverly-Killea Limited Liability Company Act (the LLC Act) a foreign or domestic limited liability company (LLC) is prohibited from rendering professional services in this state unless expressly authorized under applicable provisions of law. Professional services are those services for which a license, certification, or registration is required under specified statutes.

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Existing law authorizes civil, electrical, mechanical, engineers, or land surveyors to practice as a sole proprietorship, partnership, firm, or corporation as specified in the Business and Professions Code.¹ These professions are not authorized to practice as an LLP.

Current law defines "foreign LLP," "registered LLP," and "professional LLP services" to include partnerships licensed to engage in the practice of architecture, public accountancy, or the practice of law.²

Current law assesses an annual tax (\$800) on LLPs that are doing business in California or registered with the California Secretary of State.³

THIS BILL

This bill would allow civil, electrical, or mechanical engineers and land surveyors to organize and operate as LLPs. This authority would be repealed as of January 1, 2016. However, the bill does not include provisions that cancel any LLPs that were created or registered by civil, electrical, or mechanical engineers or land surveyors from January 1, 2011, to January 1, 2016. As a result, LLPs created or registered by civil, electrical, or mechanical engineers or land surveyors during that period would continue to be required to pay the \$800 annual tax to Franchise Tax Board until the legal existence of the entity is extinguished.

LEGISLATIVE HISTORY

SB 392 (Florez, 2009/2010) and SB 1337 (Correa, 2007/2008) would have allowed a contractor to form an LLC and authorize the issuance of a contractors' license to an LLC under the Business and Professions Code. SB 392 is currently located in the Assembly for third reading; SB 1337 bill failed passage out of the Senate Judiciary Committee.

AB 180 (Horton, 2005/2006) was similar to this bill in regard to the organization of engineers and land surveyors as LLPs. AB 180 failed passage out of the Senate.

AB 2914 (Leno, Ch. 426, Stats. 2006) extended the sunset date permitting architects to organize as LLPs to January 1, 2012.

AB 1265 (Bennoit, 2003/2004) would have authorized engineers and land surveyors to practice within the scope of their licensure as an LLP with the same insurance liability coverage requirements as that of architects. This bill was held in the Senate Judiciary Committee due to concerns regarding inadequate insurance coverage.

¹ Business and Professions Code sections 6738 and 8729 provide requirements for a civil, electrical, or mechanical engineer practicing or offering to practice within the scope of their license civil (including geotechnical and structural), electrical, or mechanical engineering as a sole proprietorship, partnership, firm, or corporation.

² Corporation Code section 16101 defines "foreign LLP," "registered LLP," and "professional LLP services."

³ Revenue and Taxation Code (R&TC) section 17948 requires an \$800 annual tax to be assessed on all LLPs doing business in the state or registered with the Secretary of State.

AB 469 (Cardoza, Ch. 504, Stats. 1998) authorized architects to form LLPs with insurance liability coverage minimums and a sunset date of January 1, 2002.

SB 513 (Calderon, Ch. 679, Stats. 1995) permitted accountants and attorneys to form LLPs with insurance liability coverage minimums.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York allow engineers and land surveyors to form an LLP if the partners are registered, licensed, or certified by that state or local licensing entity.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would result in the following revenue losses:

Estimated Revenue Impact of SB 1008 Operative October 1, 2010 Enactment Assumed By September 30, 2010 (\$ in Millions)				
2010-11	2011-12	2012-13	2013-14	2014-15
-\$0.2	-\$0.7	-\$1.4	-\$2.0	-\$2.4

Support/Opposition

Support: American Council of Engineering Companies, American GI Forum of California, Asian Business Association, California Business Properties Association, California Chamber of Commerce, California Land Surveyors Association, Century Diversified, Inc, Golden State Management Services, Greater Los Angeles Chapter of the Society of Hispanic, Professional Engineers, Inc., Hispanic Contractors Association, Latino Business Chamber of Greater Los Angeles, W2 Design, Inc.

Opposition: None.

VOTES

Assembly Floor – Ayes: 76, Noes: 0

Senate Floor – Ayes: 33, Noes: 0

Concurrence – Ayes: 35, Noes: 0

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